



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/11UB/HNA/2022/0002**

Property : **15 and 17 Chalgrove Walk, Aylesbury,
Buckinghamshire**

Appellant : **Ghazala Naeem (1)
Muhammed Naeem (2)**

Representative : **First Appellant in person.
Second Appellant did not attend.**

Respondent : **Buckinghamshire Council**

Representative : **Alaka Tomlinson**

Type of Application : **Appeal against financial penalties**

Tribunal Members : **Judge Shepherd
Marina Krisko FRICS**

Date and venue of hearing: 14th September 2022 and further written submissions received on 3/11/22

Date of Decision : 16th December 2022

DECISION

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1. This is an appeal brought against financial penalties imposed under section 249 of the Housing Act 2004 (“The Act”). The Appellants are named as Ghazala Naeem (“The First Appellant”) and Mohammed Naeem (“The Second Appellant”). The Respondents are Buckinghamshire Council. The First Appellant is in fact now called Ghazala Chaudhary as her and the Second Appellant are now divorced and her new husband is called Mr Chaudhary. The Second Appellant played no role in the appeal but was joined to the proceedings and did not object to his joining.
2. The appeal drafted by the First Appellant is dated the 7th of March 2022 and it concerns financial penalties imposed in relation to 15 and 17 Chalgrove Walk Aylesbury Buckinghamshire HP21 8NT (“No 15 and No 17”).

3. The starting point is an inspection that took place on the 27th of April 2021 when council officers visited the two premises and the First Appellant met them. Following that visit the council officers served notices for offences under section 234 of the alleged breaches of the Houses in Multiple Occupation Management England Regulations 2006 (“The Regulations”).

The First Notice

4. The first notice (“the first notice”) which is a subject to the appeal was served jointly on the First and Second Appellants in respect of No 17 for an offence under section 234 of the Act for breach of regulation 4(2) of the regulations. It was alleged that on the 27th April 2021 (the date of the inspection) the first and second Appellants without reasonable excuse failed to ensure that all fire fighting equipment and fire alarms were maintained in good order. The financial penalty imposed was £2000. The reason for the imposition of the final penalty which took account of representations made following service of a notice of intent on the 26th of October 2021 is set out in the notice:

The council has taken into consideration the civil penalties under the Housing and Planning Act 2016, guidance for local housing authorities and the Buckinghamshire Council housing enforcement policy in particular paragraph 16 and 17.

5. The Respondents recorded that the property was an HMO within the meaning of section 254 of the Act. It was alleged that the property was occupied by three or more people from two or more households in accordance with the provisions of section 258 of the Act. The first and second Appellants were alleged to be persons managing within the provisions of Section 263(3) of the Act. The First Appellant it was alleged received rent on behalf of the Second Appellant and he was the owner.

6. The Respondents noted that the First Appellant ceased to come within the exemption provided by schedule 14 (6). It was noted that the property was transferred into the sole ownership of the Second Appellant on the 10th of February 2021. In fact, this was the second transfer to take place between the couple following their break – up of relationship. In August 2020 ownership for number 15 passed to the First Appellant. For the purposes of this appeal therefore it is important to note that from 10th of February 2021 the Second Appellant was the owner of No 17 and the First Appellant was already the sole owner of No 15.
7. When the council inspected the premises on the 17th of January 2020 there was interlinked fire detection however at the time of the inspection on the 27th April 2021 council officers noted that in the front hallway of No 17 was a battery operated smoke alarm located on the ceiling and a mains wired alarm for yellow plastic head. The battery operated alarm had been installed by the fire brigade. In the first floor front right bedroom the smoke alarm was found to be operational but not interlinked.
8. It's alleged by the Respondents had been negligent in their management of the property and their failure to maintain the interlinked alarm. It was said that in settling the amount of the penalty the council had taken into account the fact that at least one of the alarms was operating although not interlinked.

The Second Notice

9. The second notice which is not the subject of the appeal was served on the First Appellant in relation to no 15 for an offence under section 234 of the Act for breach of regulation 4(2) of the regulations. It was alleged that on the 27th April 2021 the First Appellant without reasonable excuse failed to ensure that all fire fighting equipment and fire alarms were maintained in good order. The financial penalty imposed was £3500. The reasons for the imposition of the final penalty which took account of representations made following service of

a notice of intent on the 26th October 2021 were the same as the First Notice and the Respondents again recorded that this was an HMO in their view. It was alleged that the property was occupied by four or more people from two or more households in accordance with the provisions of section 258 of the Act. It was also alleged that the Appellant was a person managing within the provisions of section 263 (3) of the Act being an owner or lessee of the premises and receiving payments. It was alleged that there was evidence of occupation by very young children in one of the bedrooms as officers observed a cot, toddler's bed and decorations celebrating a 4th birthday.

10. The mains wired smoke alarms on the first floor landing, first floor rear left bedroom and first floor right box room were operable but not interlinked. The battery powered smoke alarm in the kitchen was beeping indicating an issue. In the front left lounge the mains wired smoke alarm was not securely fixed to the ceiling.
11. It was alleged that the issues with the interlinked fire alarm were identified at a time when there was inadequate measures taken to protect the occupiers from injury in respect of the structure of the HMO which meant that in the event of fire the means of escape from fire was inadequately protected
12. The Respondents alleged that the First Appellant was reckless in her failure to adequately maintained the interlinked fire alarm within the property as she stated that she tested the alarms once a week which would have alerted her to the defects.

The Third Notice

13. The third notice which is the subject of the appeal was served on the First Appellant in respect of No 15 for an offence under section 234 of the Act for

breach of regulation 4(4) of the regulations in that on the 27th of April 2021 the First Appellant without reasonable excuse failed to ensure that:

14. The doors within the property offered adequate 30 minute Fire Protection and all the doors within the property were adequately fitted with intumescent backed cold smoke seals to stop the passage of smoke and fire in the event of a fire and or the partition to the stairs leading up to the first floor was adequately constructed to provide an effective means of escape in the event of fire. The financial penalty imposed was £3500.
15. The reasons for the imposition of a financial penalty in the sum were the same as the other two notices and the Respondents noted that the property was an HMO within the meaning of s.254 Housing Act 2004. It was alleged that the property was occupied by four or more people from two or more households in accordance with the provisions of section 258 of the Act.
16. It was again alleged that the First Appellant was a person managing. The Respondents alleged believed that the appellant was negligent in her failure to adequately complete the works when subdividing the premises, the absence of doors offering 30 minute Fire Protection in respect of some of the rooms and in the failure to adequately intumescent backed cold smoke seals. new paragraph the original notice of intention to issue a civil penalty notice was dated the 26th of October and was hand delivered on that date.

Legal structure

- 17. The relevant provisions are set out in the annex to this decision.**

Anthony Gold letter

18. In November 2021 Anthony Gold Solicitors wrote to the Respondents making representations on behalf of the First Appellant. Amongst other things they stated:

- That Mr Naeem was the Freehold owner of No 17.
- That the council had not set out why the premises were HMOs.
- That the alleged breach of the regulations under Reg 4(2) was misguided because the Regulation required the manager to maintain any fire fighting equipment and that the fire alarms are maintained in good working order and here the allegation was that there was an absence of interlinked systems which would go beyond maintain ing the existing system and would imply a duty of installation.
- That the First Appellant had a reasonable excused defence because No 15 was previously licensed as a HMO and the same measures were in place.
- That the First Appellant had previously been told by Aylesbury Vale DC that the premises were not HMOs.
- That the First Appellant's role in respect of 17 Chalgrove was very limited and she received no profit from it.

First Appellant's representations

19. In her representations to the Tribunal in support of her appeal against the financial penalty the First Appellant included a signed letter from someone called "Shade" who said she was living in No 15 *by myself upstairs*. It also

stated: At that time it shared Simon and Wife and Mr Chaudary and me. I upstairs have separate bath and kitchen down was sometime landlady and only normally husband.

20. Also included with the representations was a letter from Mary Richards an officer of Aylesbury Vale DC stating that following a visit on 17 January 2020 No 17 was not regarded as an HMO amongst other things because there was a live - in landlord . It was stated that a similar letter was received for No 15 but that letter was not included.

21. Also attached to the submissions was an unsigned letter from Elena Marius dated 10th June 2022 stating that she was living at No 17 with her husband and Uncle. *Downstairs was living son Harris and Mr Naeem but not for long time son is gone to Uni and Mr Naeem out of the country.*

22. Also attached to the submissions was a letter from Simon :

I am Simon living in 15 Chalgrove Walk I was there when council came. I was living in my own studio in No 15 with wife only lady upstairs Shade and Mr Chadary downstairs, no body in property, landlady was living sometimes and sometimes out of town

23. None of the evidence provided by the First Appellant was in a proper form in the form of statements with the appropriate statement of truth. The Tribunal has been careful not to accept the evidence on face value as it is largely self serving. The better evidence was given by the First Appellant herself at the hearing.

Inspection

24. Prior to the hearing on 14th September 2022 the members of the Tribunal carried out a limited inspection. We were able to obtain access to No 15 but could not gain access to No 17. The plans for No 15 produced by the Respondents were inaccurate. That property was empty and at the date of inspection various works were being carried out.

The hearing

25. At the hearing Mr Narek (Environmental Health Officer) gave evidence on behalf of the Respondents. He confirmed his witness statement dated 31st May 2022 in which he outlined the background to the visit he made on 27th April 2021 and the service of the notices. He had visited with his colleagues Amy Starsmore, Paul Harrington and David Rickard. They were met at No 17 by the First Appellant who was cautioned pursuant to PACE . The First Appellant said *have a look round* and did not tell Mr Narek how many were in occupation. At paragraph 12 of the witness statement Mr Narek says that he was told by Mr Harrington that the First Applicant lived downstairs and another family or person lived upstairs. At paragraph 23 Mr Narek says he asked the First Appellant why there were no fire alarms in the open kitchen area and she said that she believed that she did not have to do so as it was her family home. At paragraph 24 the First Appellant said an inner room was occupied by her daughter.

26. At para 48 Mr Narek said he entered No 15 at 13.13 pm. The layout was similar to No 17. At para 56 and 57 he said that he entered a middle annex via the kitchen with the entrance door located immediately next to the oven. At para 67 the First Appellant stated there were 4 people living downstairs at No 15 and only 1 person upstairs. She said that her ex - husband was the owner and had left the country but then she said she owns both properties. When asked by Mrs Starsmore the First Appellant stated she received the rent.

27. At para 68 he states that a check on the council tax records showed that the First Appellant was the liable party and was listed as the responsible party and landlord of the premises- the address was given as No 15.
28. At para 69 he states that he sent a Section 16 Requisition for Information to both Appellants in relation to No 17 and the First Appellant in relation to 15 Chalgrove as she was the registered owner.
29. The First Appellant provided handwritten rent notes showing occupancy of both properties.
30. Also providing evidence from the Respondents was Amy Starsmore who stated at paragraph 10 that on 27th April 2021 that No 17 was owned by both Appellants. This was incorrect as the property had been transferred to the Second Appellant in February of that year. She said that the First Appellant was collecting the rent on behalf of the Second Appellant and therefore both were persons managing within Section 263.
31. Jacqui Bromilow the Head of Environmental Health also gave evidence dealing largely with the letter from Anthony Gold solicitors and the council's response.
32. At the hearing the First Appellant said that No 17 was not her property and that she had no responsibility for it. It was said by the Respondents that the First Appellant was in occupation of No 17 but not No 15. The Respondents said that she was in occupation with her son and daughter on the ground floor of No 17. Ms Starsmore recalled the conversation that took place when inspecting the premises. She said that the First Appellant had said that she occupied the ground floor front room. Her daughter occupied the ground floor middle room and her son the ground the rear room. Also in occupation was

Mr Naheem – the Second Appellant. The First Appellant denied this and said she was in occupation of No 15. She said the council had not properly considered the letter from Anthony Gold. She said that she married her current husband three years ago. The marriage to the First Appellant had been annulled in 2017 and she had transferred sole ownership of No 17 in February 2021. She said that in No15 she occupied with her husband and another lady called Shade who paid rent to her. She said Shade moved out in May or June 2021. There were three people living in the main property and Simon was living in the annex. In No 17 there was a family upstairs *Elena her husband and her uncle* she said there was nobody downstairs at the date of the inspection and there's nobody downstairs currently.

33. Following the evidence the Tribunal in consultation with the parties identified a number of issues that needed to be resolved in relation to whether the premises were licensable HMOs at the date that the inspection took place. The following questions were set and the parties were invited to make further submissions:

a) Who was in occupation of 15 Chalgrove Walk on 27th April 2021 (the date of the alleged offence)?

b) Who was in occupation of 17 Chalgrove Walk on 27th April 2021?

c) What was Mrs Chaudhary's involvement, if any in managing, 17 Chalgrove Walk at the relevant date?

d) Did 15 Chalgrove Walk qualify as a House in Multiple Occupation pursuant to the converted building test under s.254(4) Housing Act 2004?

e) Was the annex to 15 Chalgrove Walk "self - contained" and does this preclude

s.254(4) from applying?

f) If Mrs Chaudhary was in occupation of 15 Chalgrove Walk on 27th April 2021 did this mean that 15 Chalgrove Walk was exempt from being an HMO pursuant to Paragraph 6 of Schedule 14 Housing Act 2004?

34. Both parties made submissions in response to these questions.

- The First Appellant amongst other things said that she was at No 17 at the relevant date because that's where her son lived. Her ex husband lived downstairs with her son and upstairs was Elena and her family. The council tax records were in the names of her ex husband and son. The council tax records for No 15 were in her name. She stopped collecting the rent on April 2021 from the tenants at No 17 as Mr Naeem was responsible. She had no tenants after the relevant date at No 15.
- She and her current husband were in occupation of the ground floor of No 15, Shade was in occupation upstairs and Simon and Dorota the flat at the back.
- She said the voting register confirmed she and her husband were in occupation of No 15 and her ex and the children at No 17.
- Her car insurance, tax records, bank statements all confirmed she was in occupation in No 15.
- Her current husband's contract of employment and driving license confirmed he lived at No 15.
- Amy Starsmore met her husband on the date of the visit at 15

- Simon and Dorota had separate wifi in their flat
- In No 17 a family of three lived upstairs.
- The two children and Mr Naeem (the ex husband) were downstairs.
- Bills for No 17 were in the name of Mr Naeem as was the voting register, council tax bills, car insurance records and driving license.
- She said she had no involvement in collecting rent at 17 at the relevant time
- She said her ex husband had confirmed to Mr Narek that he was in charge and was being paid directly
- She had a duty of care to her children but was not otherwise involved in the management of No 17.
- She said the annex to No 15 occupied by Simon and his wife was self - contained. There was no link to the rest of the building.
- She said that her occupation of 15 meant that the property was exempt from being an HMO pursuant to paragraph 6 of Schedule 14 Housing Act 2004

35. In response the Respondents stated the following in summary:

- The First Appellant had been at No 17 when the visit took place and she had provided access.
- It was alleged that the First Applicant was in occupation of No 17 with her family.
- She said she paid the bills at No 17
- In a telephone call on 2nd June she said that she lived in No 15 with her husband. Her son and daughter lived at No 17.
- Ms Starsmore had recorded the First Appellant saying that she lived in number 17 during the visit.
- Ms Starsmore said the room occupied by Simon and his wife was not separate as there was a connecting door. In the alternative because the property was illegally divided it did come within s.257.
- They suggest that the First Appellant changed her account in relation to her occupation of No 15 and she was seeking to evade prosecution.
- The First Appellant they say was the person managing No 17 and her account given at the time supported this including that she covered the bills and the rent records.

Findings of fact in relation to the questions posed.

36. It is for the Respondents to prove beyond reasonable doubt that the Appellants have committed the offences. An essential part of the offence is that the premises concerned were an HMO (No 15) and that the First Appellant was managing No 17.

a) Who was in occupation of 15 Chalgrove Walk on 27th April 2021 (the date of the alleged offence)?

37. The Tribunal finds that the First Appellant was in occupation of No 15 at the relevant date. She owned that property. The fact that her children were in occupation of No 17 did not preclude her occupation with her new husband of No 15 at the relevant date. The Tribunal accepts that she was confused at the date of the inspection. She had been cautioned without warning which was a heavy - handed approach. The council should make a proper interview appointment before cautioning a party in this way.

38. The First Appellant contacted the Respondents after the inspection to clarify the situation. She also offered evidence of her connection to No 15 in her submissions - none of which were investigated by the council. It is not fair to suggest that she was manipulating the evidence to avoid prosecution.

39. The Tribunal also accepts that there were three other other occupiers at the relevant time – Shade upstairs and Simon and Dorita in the flat at the back. The flat was a separate self contained unit with its own access door. The fact that the flat had an interconnecting door did not preclude the flat being self contained. Accordingly in reality at the date of the inspection the occupiers were the First Appellant, her husband and Shade. The property was not therefore an HMO applying Paragraph 6 of Schedule 14 to the Act and the regulations thereto (Reg 6(2) of Regulations 2006/373 below).

The council were reminded by the First Appellant's solicitors that they needed to be satisfied that the property was an HMO but failed to consider the application of the exemption in any detail notwithstanding the fact the owner was in occupation. The appeal in relation to the third notice is therefore successful. The second notice was not appealed but the council should take note of this determination and the appropriate thing to do is to withdraw that notice.

b) Who was in occupation of 17 Chalgrove Walk on 27th April 2021?

40. The Tribunal finds that the First Appellant was not in occupation at the relevant time. In occupation were her son and daughter and a family upstairs. It is less clear that her ex husband was in occupation as he was abroad and had been for some time. He chose not to appeal the notice against him. The First Appellant was involved in the management of this property but the Tribunal accepts her account that she had stopped managing the property at the relevant date. The rent records were not conclusive as they ceased in April and evidence of connection with no 17 given by the First Appellant was not followed through by the council. She and her former husband had separated and divided their properties between them. It is more likely than not that she was living in her own property with her new husband. Her confusion at the date of the visit is dealt with above. Accordingly the First Appellant's appeal in relation to the First notice is successful. The notice stands in relation to the Second Appellant.

41. These findings of fact deal with all of the issues posed to the parties. The Tribunal were not impressed that the Respondents sought to rely on s. 257 when this had not formed the basis of the notices served and there was no documentary evidence in support of the contention.

Summary

42. The First Appellant's appeal against the First and Second notices is allowed and the said notices served upon her are cancelled. The Respondents have failed to prove that the First Appellant has committed the offences alleged against her beyond reasonable doubt.

Judge Shepherd

16th December 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appendix

Housing Act 2004

Management Regulations

234 Management regulations in respect of HMOs

(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—

- (a) there are in place satisfactory management arrangements; and
- (b) satisfactory standards of management are observed.

(2) The regulations may, in particular—

- (a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;
- (b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

(3) A person commits an offence if he fails to comply with a regulation under this section.

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[

(6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

Financial penalties

249A Financial penalties for certain housing offences in England

(1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(2) In this section “relevant housing offence” means an offence under—

(a) section 30 (failure to comply with improvement notice),

(b) section 72 (licensing of HMOs),

(c) section 95 (licensing of houses under Part 3),

(d) section 139(7) (failure to comply with overcrowding notice), or

(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

]1

Meaning of HMO

254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if–

- (a) it meets the conditions in subsection (2) (“the standard test”);
- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
- (c) it meets the conditions in subsection (4) (“the converted building test”);
- (d) an HMO declaration is in force in respect of it under section 255; or
- (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the self-contained flat test if–

- (a) it consists of a self-contained flat; and
- (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

- (a) it is a converted building;
- (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
- (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (e) their occupation of the living accommodation constitutes the only use of that accommodation; and

(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations—

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section—

“basic amenities” means—

(a) a toilet,

(b) personal washing facilities, or

(c) cooking facilities;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

“self-contained flat” means a separate set of premises (whether or not on the same floor)—

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.

Persons not forming a single household

258 HMOs: persons not forming a single household

- (1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.
- (2) Persons are to be regarded as not forming a single household unless–
 - (a) they are all members of the same family, or
 - (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.
- (3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if–
 - (a) those persons are married to [, or civil partners of, each other or live together as if they were a married couple or civil partners]¹ ;
 - (b) one of them is a relative of the other; or
 - (c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.
- (4) For those purposes–
 - (a) a “couple” means two persons who [...] ² fall within subsection (3)(a) ;
 - (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
 - (c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
 - (d) the stepchild of a person shall be treated as his child.
- (5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.
- (6) In subsection (5) “prescribed relationship” means any relationship of a description specified in the regulations.

Person having control of managing

263 Meaning of “person having control” and “person managing” etc.

- (1) In this Act “person having control” , in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Managers duties

Management of Houses in Multiple Occupation (England) Regulations 2006/372

4.— Duty of manager to take safety measures

(1) The manager must ensure that all means of escape from fire in the HMO are—

(a) kept free from obstruction; and

(b) maintained in good order and repair.

(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.

(3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.

(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—

(a) the design of the HMO;

- (b) the structural conditions in the HMO; and
 - (c) the number of occupiers in the HMO.
- (5) In performing the duty imposed by paragraph (4) the manager must in particular—
- (a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and
 - (b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.
- (6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.

Exemption from HMO

Schedule 14

6 Buildings occupied by owners

- (1) Any building which is occupied only by persons within the following paragraphs—
- (a) one or more persons who have, whether in the whole or any part of it, either the freehold estate or a leasehold interest granted for a term of more than 21 years;
 - (b) any member of the household of such a person or persons;
 - (c) no more than such number of other persons as is specified for the purposes of this paragraph in regulations made by the appropriate national authority.
- (2) This paragraph does not apply in the case of a converted block of flats to which section 257 applies, except for the purpose of determining the status of any flat in the block.

Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006/373

reg. 6 Buildings that are not HMOs for the purposes of the Act (excluding Part 1)

6.— Buildings that are not HMOs for the purposes of the Act (excluding Part 1)

- (1) A building is of a description specified for the purposes of paragraph 3 of Schedule 14 to the Act (buildings regulated otherwise than under the Act which are

not HMOs for purposes of the Act (excluding Part 1)) where its occupation is regulated by or under any of the enactments listed in Schedule 1.

(2) The number of persons specified for the purposes of paragraph 6(1)(c) of Schedule 14 to the Act is two.